

THE LAST CASUALTY ?

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## THE LAST CASUALTY?

### introduction:

A storm of controversy is raging around the military chaplaincy.

The publication of Doctor Coxes book in 1971 gave an indication of the storm's intensity. The parade of authors concluded that the military chaplaincy is an immoral, unconstitutional religion whose constituency has sold their souls to the military. Recommendations aimed at curing the ills of the chaplaincy became a death sentence instead. "The time has now come to grasp the nettle and deal with the problem, no matter how painful it may be,"<sup>1</sup> is Doctor Coxes urgent plea.

The storm continued and grew in intensity. In the spring of 1971 the General Synod of the United Church of Christ instructed a task force to return a report on the chaplaincy at its next meeting in 1973. The report prepared for the meeting was heralded to be the most comprehensive study ever compiled on the chaplaincy. It was replete with twenty-three categorical recommendations, many with a number of sub recommendations.<sup>2</sup> The climax of the report was a recommendation that the Church go on record as as the first major denomination to work toward the goal of de-

1. Harvey G. Cox, MILITARY CHAPLAINS: FROM A RELIGIOUS MILITARY TO A MILITARY RELIGION (New York: American Report Press, 1971) p 146
2. Ralph W. Weltge et al, MINISTRIES TO MILITARY PERSONNEL (Philadelphia: United Church Press, 1973) pp 113-124

militarizing the chaplaincy. It was only a desperate cry of  
foul by those chaplains at the meeting that prevented the report  
from being adopted.

In the same time period a report was commissioned  
by the United Church of Christ and the American Civil Liberties  
Union. Randolph Jonakait, the author, completed the report within  
a month of the UCC General Synod. The study was intended to be  
a definitive study that would lend credence to the UCC report by  
providing factual information to support the moral issues raised  
in the paper prepared for the Church. Instead the study ended as  
a judgement upon the chaplaincy and its failure to deal with the  
institution it served. "Almost unanimously, the CO's (conscientious  
objectors) said that the rest of the enlisted men generally did  
not have a high regard for the military clergyman."<sup>3</sup> and "A third  
interviewee told of a chaplain, unsympathetic to AWOL stories that  
a soldier's mother had died or that his wife had run off, who  
would say, 'Get the hell out of my office and don't come back  
until you learn to be a soldier. You're here to be a soldier - -  
not to be a baby!'"<sup>4</sup> are examples Jonakait cites as evidence of  
the attitude and approach chaplains take to their men.

The cross wind of the storm came from Chaplain  
Richard G. Hutcheson, USN. His article was the most widely cir-  
culated pro-chaplaincy statement to be brought into the con-

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3. Randolph N. Jonakait, THE ABUSES OF THE MILITARY CHAPLAINCY  
(New York: American Civil Liberties Union, 1973) p 57

4. ibid, p 58

troversy. Letters to the Christian Century in the following months indicated the volatile nature of this emotionally charged issue. If the reaction to his article bears any prophecy, "One of the casualties of the Vietnam war may (well) turn out to be the military chaplaincy."<sup>5</sup>

The storm has quieted somewhat. We look to the reports of study committees of the United Presbyterian Church, and the United Methodist Church to take a more moderate stand on the chaplaincy. Both reports are scheduled for presentation in the spring and summer of 1975 to their respective governing bodies. The UCC revision of the original does little but soften the words of criticism. The recommendations closely parallel those of the original report.

Since we seem to be entering an era of moderation toward the chaplaincy, can we assume that the issues raised have been resolved in the minds of those who raised them? Or is there fury remaining in the storm to compel the chaplaincy to examine the issues that spawned the criticism in the first place?

The American Civil Liberties Union, which had held that the chaplaincy was necessary to meet the requirements of the First Amendment to the U. S. Constitution, has reversed its position. It now contends that the chaplaincy in its present form is not constitutional. The exercise of control by the command structure over the chaplaincy and the discrimination against

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5. Chaplain RAD Richard G. Hutcheson, SHOULD THE MILITARY CHAPLAINCY BE CIVILIANIZED? (Chicago: The Christian Century Foundation, 30 OCT 1973; reprinted: The Chaplain, Vol 30, no. 4 Winter Quarter 1973-74) pp 6-16

against minority religious groups form their rationale for the reversal of their position. "Therefore, abolition of the present program is required....."<sup>6</sup> The UCC report due this spring falls just short of the original recommendation that the Church challenge the constitutional issue through the courts.<sup>7</sup> The present recommendation is that the Church "....be informed on constitutional and related issues pertaining to the church and state relations, especially as they concern the chaplaincies. And further, that it remain alert to new developments and trends with recommendations to the appropriate instrumentalities as to the mode of response or action."<sup>8</sup> The ACLU, considering its passed record, will challenge the issue. The UCC will watch and see.

Time nor space allow us the privilege of examining these issues in depth. Instead let us look at the foundation upon which most of the criticism is structured, examine a question concerning the constitutional issue, and speculate as to what we can possibly do about the issues.

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6. Jonakait, op cit p 67

7. Weltge, op cit p 38

8. Henry Duhan, et al, MINISTRIES TO MILITARY PERSONNEL (preliminary report prepared for the General Synod of the United Church of Christ, 1975) p 18

chapter 1: THE MILITARY MYSTIQUE - a Problem in Understanding

There is a mystique about the military that holds those outside its ranks spellbound. It becomes even more of a mystery if they proceed in the belief that nothing more than a knowledge of common English is required to understand what those in uniform say when they speak. All branches of the service recognize the problem and provide an extensive orientation program for those who enter the service by direct appointment. The Army recognizes the problem as being crucial enough to expend monies to publish Army Dictionaries and brevity codes. Words used in regulations, spoken at staff meetings, written in official correspondence, and even information releases are understood by those within the service. Those same words are understood in the light of common civilian use by those outside.

The common problem found in each of the writings critical of the chaplaincy is that the author believed he understood what the military was saying when in reality he did not.

An excellent example is the confusion of meaning given to the Chaplain's Regulation of the Army.<sup>9</sup> The regulation makes the Commander responsible for the religious program of the command. To a chaplain, this provides official status for his activities and programs within the command. He is assured that the commander will provide the necessary support, logistics, facilities and funds to maintain a program that meets the needs of the members of the command. While he needs to inform the commander of his program, and the commander may suggest a pro-

9. reference AR 165-20 Department of the Army

gram be considered, it is the chaplain who owns the program.

Another facet of the same regulation and the same wording is that the commander is responsible for providing religious coverage for the command. If his unit has no chaplain assigned for coverage, it is incumbent upon him to coordinate with his next higher headquarters to request coverage be arranged. If his unit is of sufficient size to warrant a chaplain being assigned, he is responsible for the administrative procedures by which he can request a change to his table of distribution and/or allowances.

There is not much question concerning command authority. What is not understood by non-military observers is the correlation between authority and responsibility, and the necessity of delegating both authority and even responsibility. Final accountability will always remain an element of command. Responsibility for elements of the command programs and activities is parceled out to those who have expertise. A commander can not tell his surgeon how to practice medicine. He must, however, insure that the medical coverage for the command is adequate. He can not interpret the law for his Judge Advocate but he must insure that legal matters and counseling are provided. Neither will the commander instruct his chaplain on what constitutes religious coverage. He will, however, be certain that coverage is provided to meet the needs of his men.

Critics of the military chaplaincy and the structure in which it functions see this regulation as the basis for the enslavement of the chaplain.<sup>10</sup> They question a system in which

10. Jonakait, op cit pp 24-25



a chaplain is not even responsible for his own program. The original UCC report says: "AR 165-20 (2) is a travesty on the mission of the church.....The changes which must take place in the ministry of these clergymen are predicated on the mission of the Department of the Army. That mission, in essence, is organized and massive violence, which must also become the mission of the military church once chaplains are provided..."<sup>11</sup> They understand the program not only not to be the chaplain's program, but one which must be modified by the mission of the commander. The implications followed to their logical conclusions present a distorted view of the chaplaincy to those who are confronted with the military mystique.

One further issue merits consideration here. Since the commander is responsible for the religious program of the command, he is then the supervisor and evaluator of the chaplain. Since in the critic's logic a commander of an organization whose mission is war can not be a conscientious (or Christian) person, he will evaluate the chaplain by militaristic standards. The essential issue raised from this rationale is that if the commander can <sup>not</sup> require the chaplain to comply with his wishes, he can get at the officer through his staff officer position.<sup>12</sup>

We would be naive if we would not recognize the problems inherent in the commander's basis for evaluating his chaplain. A conscientious commander recognizes the impact a chaplain has upon his command and evaluates him accordingly.

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11. Weltge, op cit p 72

12. Jonakait, op cit pp 26-31

The question as to the criteria for evaluation is still a problem. Commanders are sensitive to this problem. Those with whom I have spoken about this problem confess feelings of inadequacy when it comes to rating chaplains. To a man, however, and contrary to the expectations of our critics, the balance is usually in favor of the chaplain.

We turn now to an incident that Jonakait cites as factual evidence of a shocking practice in evaluating an individual applying for appointment as chaplain in the Army.<sup>13</sup> The Rev. Hudson B. Phillips, Jr. applied for a commission as a chaplain. A requirement existed for him to appear before a board made up of two line officers and a chaplain. He was denied appointment on the basis of his appearance before the review board. The shocking practice is the vague and subjective criteria established by the military before appointment can be granted.

It does not take a detective to reconstruct the situation. The Reverend Mr. Phillips applied for appointment as a Regular Army Chaplain. Since the regulation concerning appointment (AR 601-26) requires a review board for those who have served less than a specified length of time, he was asked to appear before the board. When he did not qualify for a Regular Army commission, he was turned down.

The existence of the various components of the military is complete confusion to a person without military experience. Since the applicant wanted to go on active duty, reserve forces are not on active duty, he checked the Regular Army

13. Jonakait, op cit pp 6-7

box on the application form.

The problem seen is that the military established its own vague and nebulous standards for appointment. What this says is that a denomination can endorse a person to serve with the military, and the military, by using its own criteria, can reject the endorsed individual.

Chaplains come on active duty as representatives of their specific denominations. When the military rejects an individual who has his churches blessing to serve as its representative, it is saying in effect that the military and the military alone will determine who may or who may not serve. The military, and hence the government, becomes involved in religion by setting personnel standards for the church. The government tells a denomination who from among their clergy are 'fit' to serve.

Were this incident not a comedy of errors, the problems involved would be far reaching. No matter how much truth or error exists in the implications our critics have drawn, the incident serves to bridge the gap between the lack of understanding problem and the constitutional issues.

## chapter 2: COULD THE CHAPLAINCY BE UNCONSTITUTIONAL?

The First Amendment to the Constitution of the United States reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;..."<sup>14</sup> Specific, yet broad in scope, directives forbid the government the authority to set-up one religion or religious group as an established religion. It further forbids the right to impede the individual in the practice of his religion. These two clauses are often entangled in that a violation of one becomes a violation of the other.

The Supreme Court of the United States has interpreted the amendment to prohibit excessive entanglement in the affairs of any religious group or individual. The assumption is that some level of involvement is necessary in order to meet the requirements of an orderly society. The right of clergymen to perform marriages only after he has been certified by his religious group and after he has registered that certification with the state is an example of state involvement in the affairs of the church. This involvement is necessary in order to assure the legality of marriage is insured by the state. Yet, in a strict interpretation of the law, this would violate the free exercise clause of the First Amendment. It does interfere with the right of the church to set-up its own practices for marriages.

We need examine only one standard established by the Department of Defense as a requirement for appointment to

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14. Saul K. Padover, THE LIVING U.S. CONSTITUTION (New York: New American Library, revised ed. 1968) p 82

serve as a chaplain in order to determine if the government has become excessively entangled with religion. That standard is the educational requirement.

The free exercise clause would grant the denominations the right of determining what qualifications are necessary for its clergy to be acceptable. When a denomination has no requirement for a specific level of education as a prerequisite for ordination and/or licensure of its clergy, that denomination has the right to recommend an acceptable minister for service in the military.

When the endorsed clergyman presents his application to the selected branch of service and he is rejected because he does not meet the educational requirements for appointment, it is a branch of the federal government that has determined for the denomination what its educational requirements must be. Since exceptions are disallowed, the government tells the denomination that it must meet its standards before that denomination can have representation within the military. In the recent thinking of the Supreme Court, this would constitute a violation of both the denomination's and the individual's free exercise rights. Mr. Justice Jackson wrote: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion,....or force citizens to confess by word or act their faith therein. If there are any circumstances which permit exception, they do not now occur to us."<sup>15</sup>

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15. ibid, p 267

The primary problem becomes one of stating specific educational requirements as a prerequisite for appointment to the armed forces chaplaincy. Churches which do not expect their clergy to equal the military educational requirement are being denied representation by their own clergy. In essence, the government has become involved with the determination of what credentials a clergyman must possess before he can be considered a clergyman.

This single requirement accomplishes twothings, both of which are in violation of the constitution. It first denies the free exercise of religion to those who hold membership in churches not requiring education at a specific and equal level. It second constitutes the establishment of those groups who require educational levels equal to the standards established by the Department of Defense.

The free exercise clause presupposes the free access to the religious belief and practice of a person's choice. The military does not permit the individual to practice his religion in the church of his choice by virtue of the necessity of geographical assignment. No soldier can serve his tour, short or long, in proximity to his home of record. Military installations are scattered throughout the United States and the world. There can be no guarantee that a congregation of the same fellowship is even available near any installation where the serviceman may be assigned. Should there be no sister congregation adjacent to the serviceman's place of assignment, he could claim that he has been denied his free exercise rights as guaranteed by the First Amendment.

Current critics feel the assignment limitation is invalid today. We are in the time of an all volunteer military force. The reasoning goes that the individual who has joined the service of his own accord has voluntarily relinquished his right to practice his religion in the church of his choice.

Mr. Justice Steward writes: "A single example should suffice to make the point. Spending federal funds to employ chaplains for the armed forces might be said to violate the Establishment clause. Yet a lonely soldier stationed at some faraway outpost could surely complain that a government which did not provide him the opportunity for pastoral guidance was affirmatively prohibiting the free exercise of his religion."<sup>16</sup> The chaplaincy serves to provide the individual with his right to free exercise of religion. When he faces the possibility of never meeting a chaplain of his particular faith or not having a church of his denomination in the area of his assignment, he can not freely exercise his religion.

Since the military has determined what educational requirements are necessary for appointment, it has in effect established those churches clergy who adhere to the same standard. These groups are commonly those of the Judeo-Christian tradition.

Today there is a rise in popularity of the Eastern Religions in America. These groups are not all pacifists and do have members on active duty with the armed forces. They do not have chaplain representation. The question as to whether or not they could meet the educational standards set by the military is a moot one. The problem is that there is no agency that parallels 16. ibid, pp 311-312

the endorsing agencies of those churches of the Judeo-Christian group.

The individual who holds to the faith and practice of one of these peculiar religions not only has his free exercise rights denied, but he is confronted with a substitute clergyman who is of the established religion. He might well have the right to complain that he is being denied his rights to practice his religion as well as being discriminated against.

We do not have to consider the Eastern religious groups to find evidence of this denial and discrimination. Many Baptist groups, the Churches of Christ, The Latter Day Saints, and many of the pentecostal groups are in the same category. Their standards for ordination are completely different from the standards of the military. They find themselves excluded from a viable ministry because they choose to determine for themselves what standards they need. So, not only do we conclude that the religious groups of the Judeo-Christian tradition constitute the established religion of the military, but it is a selective establishment of certain groups from within that tradition. These are the few who enjoy the privilege of a ministry to the men and women of our armed forces.

Our only conclusion can be that the chaplaincy as it is presently constituted is in violation of both the free exercise clause and the establishment clause of the First Amendment of the constitution we have sworn to defend against all adversaries.



chapter 3: SO - WHAT CAN WE DO?

Accenting the negative must be second nature to man. We find it easy to criticize but so arduous a task to come to viable, possible solutions to the issues we raise in criticism. We need to continually ask ourselves what can we do to correct the ills we find so evident?

We are certain that groups and individuals will continue to address questions to the chaplaincy. We are equally certain that their questions and their conclusions will continue to be drawn with the framework of their lack of understanding of the military.

The chaplaincy needs to establish lines of communication with denominations and groups who are addressing these questions today. The Armed Forces Chaplains Board as well as the Offices of the Chiefs of Chaplains of all three armed forces currently share this responsibility. The Army office has a section that concerns itself with ecclesiastical affairs. Its line of communication, however, is through the cooperating endorsing agencies. Remember the old gossip game where you whispered a hypothetical story in the ear of one person that was seated next to you? That person passed the story on to the next until the story had completed the circle. The last person repeated the story out loud and it was compared with the original version. Everyone was amazed at how the story had become distorted in the process. The same principle holds true in the

chaplaincies attempt to communicate through one group to another. What the denominations receive is colored by the understanding given the message by the endorsing agent. Something is lost in the process.

Could we not set up a series of seminars for those who do have honest questions concerning the practices and policies of the chaplaincy? In this way the denominations would find that the military is not the horned monster they have imagined it to be.

It would not be an easy task. I know that I would not want that job.

But what of the constitutional delima in which we find ourselves? We recognize the competitiveness inherent in the military scheme of things. Allowing individuals into the chaplaincy who do not have the training would place them at a distinct disadvantage with those who do. This rationale has been the foundation of the insistence upon the educational requirement for appointment.

What of the possibility of a contract chaplaincy for those who are not as highly trained as the military believes is necessary? Let us say that an individual endorsed by his denomination but not qualified by DOD standards were to be given a contract for service for a specified period of time. The individual would recognize by the contract that he will not be retained in the service unless he had taken it upon himself to become qualified. He could then be considered for career status. If he had not gained the education necessary by the end of his

specified contract, he would not be considered for renewal. Couldn't we allow a clergyman the privilege of gaining an education while in the service if we can do this for an enlisted man or an officer?

This arrangement would require considerable revision of existing regulations. It would certainly have to pass the hurdles of Congress but the chaplaincy would gain a broader base of representation. It needs this broader base to continue to function within the Constitution.

In closing then we need to recognize that our critics have some problems trying to make sense out of this mysterious organization called the military. We also need to recognize that they have raised some valid objections to the present structure and practices within the chaplaincy. At this point we can only ask ourselves, what are we to do? Can we afford to close our eyes and hope that the storm blows over? Or do we at least re-examine our institution to search out that second mile our fellow Americans are asking us to go?

Our problems are not fatal - but they can be.



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